

Central Administrative Tribunal, Principal Bench

OA No. 2739/2004
MA No. 2265/2004

New Delhi this the 9th day of January, 2006

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

Hon'ble Mr. N.D. Dayal, Member (A)

1. Shri P.K. Anand
Investigator (Stat)
Department of Family Welfare,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
2. Shri K.K. Bansal
Investigator (Stat)
Department of Family Welfare,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
3. Mrs. R.K. Beniwal
Investigator (Stat)
Department of Family Welfare,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
4. Shri V.K. Khanna-I
Investigator (Stat)
Department of Family Welfare,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
5. Shri U.S. Virmani
Investigator (Stat)
Department of Family Welfare,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
6. Shri O.P. Wadhwa
Investigator (Stat)
Department of Family Welfare,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
7. Shri Surendra Kumar
Investigator (Stat)
Department of Family Welfare,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.

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8. Shri Rakesh Agrawal
Sr. Investigator
M/o Road Transport & Highways,
Transport Bhavan,
Government of India,
Sansad Marg,
New Delhi-110 001.
9. Mrs. Radha Vasudevan
Stat. Assistant
Department of Family Welfare,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
10. Shri Rajendra Prasad
Stat. Assistant
Department of Family Welfare,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
11. Shri Prem Prakash
Statistical Assistant
Directorate General of Health Services,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.

....Applicants

By Advocate: Shri H.K. Gangwani.

Versus

1. The Secretary
M/o Statistics and Prog. Implementation,
Government of India,
Sardar Patel Bhavan,
New Delhi-110 001.
2. The Secretary,
Department of Health
M/o Health and Family Welfare,
Government of India,
Nirman Bhawan,
New Delhi-110 011.
3. The Secretary,
Department of Family Welfare,
M/o Health and Family Welfare,
Government of India,
Nirman Bhawan, New Delhi-110 011.
4. The Secretary,
M/o Road Transport & Highways,
Transport Bhavan,
Government of India,
Sansad Marg,
New Delhi-110 001.

5. The Secretary,
M/o Personnel, Public Grievances & Pensions,
Department of Personnel and Training,
North Block,
New Delhi-110 001.
6. The Chairman,
Union Public Service Commission,
Dhoulpur House,
Shahjahan Road,
New Delhi-110 069.

...Respondents

By Advocate: Shri Shamsuddin Khan

ORDER(ORAL)

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

These 11 applicants have filed the present OA for setting aside the Office Memorandum dated 25.6.2004, Annexure A-1 whereby the respondents have regulated the grant of financial upgradation under Assured Career Progression Scheme (ACP Scheme) to the incumbents holding the posts included in the Subordinate Statistical Service as provided in the OM and for a further direction to the respondents to grant non-functional scale of Rs. 8000-13500 on completion of 4 years instead of granting intermediary scale of Rs. 7450-11500 as non functional scale in line with the Central Statistical Service and further grant non-functional scale in the scale of Rs.6500-10500 instead of 5500-9000.

2. The factual background is as follows. The applicant Nos.1 to 3 were appointed as Investigator in the Ministry of Health and Family Welfare in the pre-revised pay scale of Rs.1640-2900. The applicant Nos. 4 to 7 were promoted as Investigator and applicant No.8 was appointed as Senior Investigator in the Ministry of Road Transport and Highways in 1989. The applicant Nos. 9 to 11 were promoted as Statistical Assistants. The pay scale of the applicants were revised in accordance with the recommendations of 5th Central Pay Commission with effect from 1.1.1996. The post of Investigator/Senior Investigator in the pay scale of Rs.5500-9000 (revised to Rs.6500-10500) was a feeder grade of Indian Statistical Service Grade-IV in the scale of Rs.8000-13500. The applicants were appointed as Computer in the pay scale of Rs.4000-6000, Statistical Assistant in the scale of Rs.5000-8000 and Investigator (Statistical) in the scale of Rs.6500-10500. On completion of 12 years and 24 years of service respectively, they were granted first and second financial upgradation under the ACP Scheme. The

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respondents have now issued orders dated 25.6.2004 whereby the persons who were earlier granted financial upgradation under ACP Scheme in the pay scale of Rs.8000-13500 were downgraded in the pay scale of Rs.7450-11500. Similarly persons who were working as Statistical Assistant and were granted the financial upgradation under the ACP Scheme in the scale of Rs.6500-10500 were downgraded earlier in the pay scale of Rs.5500-9000 retrospectively. The financial upgradation under the ACP Scheme was granted to the applicants in the pay scale of Rs.6500-10500 and Rs.8000-13500 on or after 9.8.1999 before the Subordinate Statistical Service (SSS) was formed. After completion of 12 years service, the applicant No.1 was given the benefit of ACP Scheme in the pay scale of Rs.8000-13500. By the impugned OM, he has now been placed in the pay scale of Rs.7450-13500 (non-functional) with retrospective effect which is illegal and arbitrary. Similarly other applicants are also affected as their pay scale are sought to be reduced retrospectively. Subordinate Statistical Service came into existence on 30.1.2002 whereas the ACP Scheme has been made applicable retrospectively with effect from 9.8.1999. As per the recommendation of the 5th Central Pay Commission, the respondents have introduced intermediary pay scale of Rs.7450-11500 (non-functional) and promotion to this pay scale as well as entry into Indian Statistical Service has been made subject to availability of vacancies whereas as per the recommendation of the 5th Central Pay Commission, it was to be done in a time bound manner, therefore, the introduction of intermediary scale is contrary to the recommendation of the Central Pay Commission. The applicants have a legitimate expectation of promotion from the grade of Rs.8000-13500 but with the reduction of pay scale they would be granted the pay scale of Rs.8000-13500 and only thereafter aspire to the higher pay scale. It is submitted that the orders of the respondents are violative of Articles 14 and 16 of the Constitution of India. The pay scale of the applicants could not be reduced by the respondents without giving an opportunity of hearing to the applicants.

3. The respondents contested the OA. In the counter reply it was submitted that the 5th Central Pay Commission in para 81.17 of the report had recommended for grant of pay scale to Group 'B' and Group 'C' Statistical function posts located in different Ministries/Departments for constitution of a Subordinate Statistical Service (SSS) by grouping such posts. Since the implementation of the recommendation of the

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Commission and constitution of SSS was time consuming and complex exercise, the Ministries/Departments was advised vide OM dated 30.6.1998 to grant upgraded pay scales as recommended by the 5th Pay Commission with effect from 1.1.1996 subject to certain conditions. Accordingly, following pay scales were granted to Group 'B' and Group 'C' Statistical function posts:-

"Prerevised pay scales Group 'B' and 'C' Statistical function posts	Normal replacement pay pay scale	Upgraded replacement pay scale granted w.e.f. 1.1.1996 as per recommendations of the 5 th CPC
Rs. 1400-2300	Rs.4500-7000	Rs.5000-8000
Rs.1600-2660	Rs.5000-8000	Rs.5500-9000
Rs.1640-2900	Rs.5500-9000	Rs.6500-10500".

4. The structure of the Subordinate Statistical Service was published as under:-

"Statistical Investigator Grade-I Rs.7450-11500

Statistical Investigator Grade-II Rs. 6500-10500

Statistical Investigator Grade-III Rs. 5500-9000

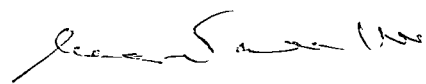
Statistical Investigator Grade-IV Rs.5000-8000".

5. Subordinate Statistical Service (Group 'B' Gazetted) Rules, 2002 and Subordinate Statistical Service (Group 'C') Rules, 2002 were accordingly notified on 12.2.2002. With a view to operationalise the SSS, the Government undertook the exercise of initial constitution of the service as per provisions made in the rules and appointed the existing departmental candidates to the appropriate grades of the service with effect from 1.4.2004. The Central Pay Commission had recommended improvement in the pay scale of Group 'B' and Group 'C' statistical function posts only in the context of the recommendation towards constitution of SSS. Without constituting the SSS the said post would have got the normal replacement scale as mentioned above. Thus the grant of upgraded pay scale with effect from 1.1.1996 and subsequent constitution of the SSS and its operationalisation of the SSS with effect from 1.4.2004 has to be viewed together and not in isolation. After ACP Scheme was introduced with effect from 9.8.1999, it was decided to grant two financial upgradations under the said Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years of service respectively and the

existing hierarchy in relation to a cadre would mean the restructured grades and the financial upgradation would be allowed in the restructured hierarchy. Accordingly, the DOP&T issued the necessary guide-lines for grant of financial upgradation under the ACP Scheme with reference to SSS structure vide OM dated 24/25.6.2004 which is impugned in the OA. As per these guidelines, financial upgradation under the ACP scheme would be four grade structure in SSS right from the inception of the ACP Scheme, i.e., 9.8.1999; each of the four grade SSS would count as a specific grade in the hierarchy for the purpose of granting financial upgradation under ACP Scheme on completion of 12 years and 24 years of regular service; the pay scale already granted under the said scheme to some of the persons as per earlier two/three tier structure would have to be adjusted with reference to the four-grade structure of the SSS and the pay of such persons would have to be refixed in the appropriate pay scale with reference to four grade structure of SSS wherever necessary; if at the stage of operationalisation of SSS a person is adjusted in a grade higher than one held by him on a regular basis, the same would be treated at par with promotion and would offset against claim for first and second ACP. The constitution of SSS and grant of financial upgradation under ACP scheme as per four grade SSS structure has to be viewed in its totality in the form of a package. It is further stated that applicant No.1 to 8 and 9 to 11 on opting to join SSS have joined the Statistical Investigator Grade I, i.e., Rs.7450-11500 and Statistical Investigator Grade-III in the pay scale of Rs.5500-9000 respectively of SSS with effect from 1.4.2004 which is a grade higher than the grade posts of Investigator (Stat.) Rs.6500-10500 and Statistical Assistant in the grade of Rs.5000-8000 held by them prior to their absorption in SSS. So as per the guidelines their appointment to Grade-I and Grade-III of SSS would be treated on par with promotion. Hence, it was prayed that the OA be dismissed.

6. In the rejoinder the applicants have reiterated their case and controverted the allegations made by the respondents in their counter.

7. We have heard the learned counsel for the parties and gone through the relevant record.



8. The applicants are impugning the OM No. 11011/6/2003-SSS dated 24/25.6.2004 issued by the Ministry of Statistics and Programme Implementation which, inter alia, stated:-

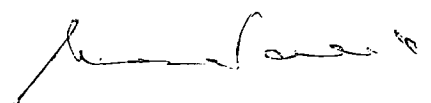
“(iii) Pay scales already granted under ACP scheme to some of the incumbents as per the earlier two/three-tier structure would have to be adjusted with reference to the four-grade structure of the SSS. The pay of such incumbents would, therefore, have to be re-fixed in the appropriate pay scale with reference to the four grade structure of the SSS, wherever necessary”.

9. The legality of the above said OM dated 20/25.6.2004 came up for consideration before a division bench of this Tribunal in OA No.351/2003 titled All India Association of Investigators National Sample Survey Organisation and Another Vs. Secretary, Ministry of Statistics and Programme Implementation and others decided on 27.6.2005. The Tribunal has set aside the order of the respondents to treat four tier structure including two N. F. grades as existing hierarchy for ACP and the decision to adopt such a hierarchy vide OM dated 25.6.2004 and the case has been remanded back to the respondents to re-consider the entire issue in the light of condition No.13 of the ACP Scheme and decision of High Court of Delhi in Union of India Vs. F.C. Jain in CWP 4664/2001 decided on 18.4.2002. The order has not been implemented as yet. Fact remains that OM dated 24/25.6.2004 stands set aside.

10. The learned counsel for the applicants has also produced before us the orders of this Tribunal dated 26th May, 2005 in OA No. 1678/2004 in the case titled Surendra Kumar Vs. The Secretary, Ministry of Statistics and Programme Implementation. Learned counsel for the applicants has submitted that these orders fully cover the present case also as the facts as well as the question of law involved are identical. As regards the order it is submitted that Writ Petition assailing the order has been filed before the High Court but the operation of the order has not been stayed.

11. A Division Bench of this Tribunal in OA No. 2165/2004 titled Radhay Shyam Vs. U.O.I. and order decided on 20.10.2005 again considered the same question and agreeing with the order of this Tribunal in Surendra Kumar (Supra) has decided that the applicant was entitled to the scale of Rs.6500-10500 as second financial upgradation w.e.f. 9.8.1999 with all financial consequences.

12. The learned counsel for the applicants has stated that the present OA may be disposed off in the light of the order dated 27.6.2005.




13. Learned counsel for the respondents, during the course of arguments, has stated that the applicants are not entitled to be granted the relief claimed for the reasons, which have been detailed in the counter-reply. He has reiterated those contentions in his arguments, but has conceded that the orders of this Tribunal dated 27.6.2005 and 26.5.2005 cover the present case also.

14. Since the present case is a covered case by the orders of this Tribunal dated 27.6.2005, 26.5.2005 and 20.10.2005, we are inclined to dispose off this OA also in terms of the order dated 27.6.2005 against which no writ petition or appeal has been filed by the department and in line with the request of the learned counsel for the applicants. In the order dated 27.6.2005 the Tribunal has given the following directions:-

“33. In the result, for the foregoing reasons, OA Nos. 2770/2003 and 1845/2004 are partly allowed. The action of the respondents to treat four tier structure including two non-functional grades as existing hierarchy for ACP and their decision to adopt such a hierarchy vide letter dated 25.6.2004 is set aside and the matter is remanded back to the respondents to reconsider the entire issue in the light of condition no.13 of the ACP Scheme as well as decision of the High Court of Delhi in F.C. Jain's case (Supra). This exercise shall be done, with a speaking order to be passed, within a period of six months from the date of receipt of a certified copy of this order. No costs.”

15. Accordingly, the present OA is disposed of in terms of the above directions of the Tribunal dated 27.6.2005 in OA 351/2003 with OA No. 1845/2004 and OA No. 2770/2003. The respondents shall implement the order within a period of six months from the date of receipt of a copy of this order. However, the parties are left to bear their own costs.


(N.D. Dayal)
Member (A)

Rakesh


(M.A. Khan)
Vice Chairman (J)